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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

In re ERIC L., A Person Coming Under The
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

ERIC L.,

Defendant and Appellant.

F044667

(Super. Ct. No. JUV500291)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Stanislaus County. Donald E. Shaver, Judge.

Gregory L. Cannon, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Mary Jo Graves, Assistant Attorney General, John G. McLean and Harry Joseph Colombo, Deputy Attorneys General, for Plaintiff and Respondent.

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* Before Wiseman, Acting P.J., Cornell, J., and Gomes, J.

Eric L. contends the juvenile court miscalculated his maximum period of confinement (MPC) by aggregating and altering the terms imposed at prior dispositional hearings. We agree and will reduce Eric's 102-month MPC by six months.

BACKGROUND

Pursuant to petitions filed October 21, 1998, and December 4, 1998, 13-year-old Eric admitted misdemeanor counts of vandalism (Pen. Code,¹ § 594, subd. (b)(4)), petty theft (§ 484, subd. (a)), and loitering (§ 647, subd. (h)). On March 1, 1999, the juvenile court declared Eric a ward of the court, placed him on probation, ordered him to serve 15 days on a juvenile court work program, and set his MPC at 10 months. Three weeks later, the juvenile court found Eric violated the terms of his probation by missing school without an excuse. (Welf. & Inst. Code, § 777, subd. (e).) The juvenile court ordered Eric to serve 17 days at juvenile hall.

As a result of additional petitions filed August 18, 1999, and August 26, 1999, Eric admitted possessing cocaine (Health & Saf. Code, § 11350, subd. (a)), automobile theft (Veh. Code, § 10851), and violating probation. Before entering his plea, Eric acknowledged he faced a potential 46-month MPC. At a September 20, 1999, dispositional hearing, the juvenile court ordered Eric to serve 35 days on the juvenile court work program and set his MPC at 36 months for possessing cocaine plus four months for automobile theft, without any additional time for the violations of probation. Apparently electing not to aggregate time from the prior disposition, the juvenile court's minutes state: "total maximum commitment time on this order 40 months."

In September 2002, 17-year-old Eric pled no contest to assault by means of force likely to cause great bodily injury (§ 245, subd. (a)(1)) for the benefit of a criminal street gang (§ 186.22, subd. (b)(1)(A)). The juvenile court advised Eric he faced a 114-month MPC before entering his plea. At an October 2002 dispositional hearing, the juvenile

¹ Further statutory references are to the Penal Code unless otherwise stated.

court declared Eric's assault a felony and imposed, but suspended, placement at the California Youth Authority (CYA) and instead ordered him to serve 180 days in juvenile hall. The juvenile court set Eric's MPC at 96 months, based on 48-month terms for each current offense, expressly declining to aggregate time for violating probation and without mentioning the previously sustained petitions. The juvenile court's minutes state: "total maximum commitment on this order 96 months."

In November 2003, after twice finding Eric violated the terms of his probation, the juvenile court ordered him to CYA for a 102-month MPC by aggregating and recalculating terms imposed under the previously sustained petitions.

DISCUSSION

Eric contends the juvenile court erred at the most recent probation violation hearing by adding six months to the 96-month MPC already set by the juvenile court at the October 2002 dispositional hearing. The Second Appellate District recently addressed a juvenile court's ability to amend prior dispositional orders, holding: "While the later court has the power to impose a different disposition and aggregate unserved time from prior sustained petitions, it may not recalculate the maximum confinement time for a previously determined petition." (*In re David H.* (2003) 106 Cal.App.4th 1131, 1137.) The *David H.* court noted that the juvenile court's task in calculating the MPC was particularly complicated by the absence of any direct evidence that the judicial officers adjudicating prior petitions decided against aggregating time for each separate count in determining the MPC. (*Ibid.*) The court reasoned, however, that "by comparing the maximum confinement period against the result obtained by applying the formula required by Welfare and Institutions Code section 726 and Penal Code section 1170.1, subdivision (a), the court below could easily have determined that it could not include separate terms for each count of those petitions." (*Id.* at pp. 1137-1138.)

Notwithstanding the Attorney General's disagreement, the juvenile court here could have determined it already elected not to aggregate Eric's MPC from previously

sustained petitions by referring to Eric's October 2, 2002, dispositional order imposing a 96-month MPC calculated exclusively from the charges found true under his June 25, 2002, petition. Accordingly, the juvenile court erred by recalculating and increasing Eric's MPC when it ordered him to CYA.

DISPOSITION

Eric's maximum period of confinement is reduced to 96 months. The juvenile court shall prepare and send to the California Youth Authority an amended commitment order reflecting a maximum period of confinement of 48 months for assault by means of force likely to cause great bodily injury (§ 245, subd. (a)(1)) plus an additional 48 months for committing the offense for the benefit of a criminal street gang (§ 186.22, subd. (b)(1)(A)) pursuant to the petition filed June 25, 2002. In all other respects, the judgment is affirmed.